

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO. 7126 of 2000

Dated: 26-07-2005

Between:

M. Sathyanarayana Rao, s/o. M. Kishan Rao, Aged: about 50 years, Flat No.S1
Shirdi Apartments, B/s. Yashoda Hospital,Rajbhavan Road, Somajiguda,
Hyderabad.

..Petitioner.

And

1. A.P.State Co-Operative Marketing Federation Limited (Markfed)

5-8-58/B, 7th Floor, Parisrama Bhavan, Basheerbagh, Hyderabad

and others.

..Respondents.

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ORDER:

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This writ petition is filed seeking a writ of certiorari to quash the order dated 27-1-2000 in C.T.A.No.5 & 254 of 1997 passed by the Cooperative Tribunal, Hyderabad, as arbitrary and illegal.

It is the case of the petitioner that he was appointed as a Junior Office Assistant in the first respondent Marketing Federation on 15-2-1973. Subsequently, he was promoted as Senior Office Assistant in the year 1976. The petitioner was working as a Senior Office Assistant in Mechanical Section at Head Office and incharge of Godown Keeper/Record Keeper of Iron & Steel section. The first respondent also engaged in the business of marketing various products like fertilizers, seeds, rice, agricultural implements, iron and steel etc. The sales of the above products are only conducted to the constituent member societies. There are no open market sales of the products except rice. On 31-3-1982 and on 1-4-1982 he was asked to raise invoice on the instructions of the then officer Mr. G. Venkat Rao, Deputy Processing Expert. The two societies to whom GCI sheets were delivered, are constituent members of the first respondent society and the said societies gave two DDs bearing Nos.351549 dated 29-3-1982 for a sum of Rs.81,018/- and DD No. 152496 dated 1-4-1982

for Rs.92,952/-. Further, the petitioner had sent U.O. note dated 1-4-1982 duly enclosing the above two DDs to the Deputy Processing Expert, who is the head of the section. Thereafter, nothing happened for seven long years. While so, the first respondent, vide his orders dated 23-3-1989 appointed one Mr. Md. Ruknuddin, Deputy Executive Engineer (Mechanical) to conduct a detailed enquiry on the sale proceeds of GCI Sheets. In the said order, it was stated that the petitioner failed to remit the sale proceeds of GC sheets while he was working in the head office (Mechanical Section) and Mr. Md. Ruknuddin, Assistant Engineer (Technical) was appointed as an Enquiry Officer to enquire into the averment and relevant papers were also enclosed. According to the petitioner, the said Mr. Ruknuddin conducted an enquiry and submitted a report on 17-7-1989 holding that the petitioner was not responsible for the missing of the two DDs. However, thereafter, nothing happened for another two years. But, suddenly, on 19-6-1991 the first respondent issued a show cause notice to the petitioner to explain as to why disciplinary action should not be taken against him. The petitioner submitted his explanation to the same. Having not satisfied with the explanation, a detailed enquiry was conducted and finally, the petitioner was removed from service w.e.f. 19-9-1996. Aggrieved by the same, the petitioner filed I.D.No.60 of 1996 before the Labour Court-I, Hyderabad and ultimately, he was reinstated into service.

According to the petitioner, having not satisfied with the punishment orders imposed by them earlier, which were reversed by the Labour Court, the respondents have initiated proceedings under Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'). An arbitrator was appointed and he passed an award against the petitioner. Aggrieved by the same, an appeal in A.R.C.No.14 of 1996 was filed before the Andhra Pradesh Cooperative Tribunal, which was also dismissed. Aggrieved by the same, the present writ petition is filed.

A detailed counter has been filed by the respondents denying the allegations made by the petitioner and supporting the award passed by the Cooperative Society.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the award passed by the Cooperative Tribunal and other material available on record.

At the outset, I am of the opinion that the petitioner has not made out any ground to interfere with the award passed by the Cooperative Tribunal by this Court under Article 226 of the Constitution of India. The learned counsel for the petitioner raised only two questions of law, firstly, as to the limitation of the dispute being referred by the respondents and secondly, as to jurisdiction of the 2nd respondent to enquire into the matter under Section 61 of the Act and to pass the impugned proceedings by the arbitrator.

In so far as the question of limitation is concerned, admittedly, the missing of DDs were relatable to the year 1982. The first DD was issued on 29-3-1982 and the second DD was issued on 1-4-1982. However, missing of those two DDs came to light during the course of the audit conducted by the department in the year 1989. When the petitioner has taken an objection as to the maintainability of the dispute as per the Rule 49 of the Andhra Pradesh Cooperative Societies Rules (For short' the Rules'), the Special cadre Deputy Registrar/Enforcement Officer (Arbitrator) has observed as under;

“It is known law that in case of fraud the time does not run against the defendant until the plaintiff discovered the fraud, and the facts that are necessary to prove that the defendant alone is responsible for it. In this case the fraud is actually committed on 1-4-1982 and it came to the notice of the plaintiff only on 3-2-1989 but it could not be directly attributable to the defendant on the basis of this report. But the plaintiff came to conclusion that the defendant alone is responsible for the fraud through investigating report dated 10-1-1991 (Ex.A15) of Sri A. Krishna Mohan Rao. Therefore, I feel the cause of action against the defendant across to the plaintiff on 30-4-1991 but not on 1-4-1982 to recover the amount from defendant. But the plaintiff cannot file a claim without giving an opportunity to the defendant, therefore he commenced that process on 19-6-1991 (Ex.A-16) and completed on 19-9-1996 and the defendant participated and cooperated all through this procedure and the plaintiff then filed the claim on 2-12-1996. Therefore, I feel the plaintiff is filed his petition within the time.

Admittedly, this is a case of fraud and the limitation does not run from the date

of the fraud. The limitation obviously would run from the date of fixing the responsibility against a particular individual. In this case, admittedly, the responsibility was fixed on the petitioner only on 30-4-1991. Therefore, it cannot be said that invoking the provision under Section 61 of the Act in the year 1996-97 is beyond six years as contemplated under Rule 49 of the Rules.

In so far as the jurisdiction of the second respondent in passing of the orders is concerned, the learned counsel for the petitioner drawn attention of this Court to G.O.M.S.No.420 dated 06-06-1991, wherein a notification has been issued, which reads as under;

“In exercise of the powers conferred by Section 3 of the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) and in partial modification of the notification issued in G.O.Ms.No.166 Food and Agriculture (Coop.IV) Department dated 27-03-1987 the Governor of Andhra Pradesh hereby confers on the special cadre Deputy Registrar/Enforcement Officer)/the Deputy Registrar/Development Officer (Enforcement) working on F.R.127 terms in the Andhra Pradesh State Cooperative Marketing Federation, the powers under Section 61,62,70,71 and 73 of the said Act, and Rules 49,52 and 54 framed there under in relation to the societies affiliated to the said federation”.

According to the learned counsel for the petitioner that the notification deals with the societies affiliated to the said federation and it is not applicable in case of an employee committed any fraud and any enquiry being conducted into such matters. It is difficult to agree with the contention raised by the learned counsel for the petitioner. The purport of the G.O., as noted above would clearly show that it is nothing but change of nomenclature and conferring power on an officer to tackle the cases arising in his jurisdiction. Therefore, it cannot be said that the second respondent had no jurisdiction to entertain the petition under Section 61 of the Act. Therefore, the writ petition is devoid of merits and is liable to be dismissed.

Except this no other grounds urged by the counsel for the petitioner.

Accordingly, the Writ Petition is dismissed. No order as to costs.

26-07-2005

sj